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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,718

03/23/2006

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EXAMINER

WALKER, NED ANDREW

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

08/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/564,718</p>	<p>Applicant(s) ANRAKU ET AL.</p>	
	<p>Examiner NED A. WALKER</p>	<p>Art Unit 3781</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 11 August 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Anthony Stashick/
Supervisory Patent Examiner, Art Unit 3781

Continuation of 11.

Applicant's arguments see amendment filed August 11, 2009, with respect to the rejection of claims 2-6 and 8-19 as being obvious over Iheme et al. (US Pub. No. 20010039058) in view of Matweb (Deflection Temperature Testing of Plastics – Typical Deflection Temperatures and Melting Points of Polymers [Archived from the internet June 5, 2002]) have been fully considered, but are not persuasive. For the specific application of these references to the Applicant's claims, please see the Final Rejection dated February 17th, 2009.

The Applicant argues that the above references in combination do not disclose the claimed invention. Specifically, the Applicant contends: "Iheme never discloses selecting the combination of the material forming the stopper and the material forming the container as defined in claim 2. The examples of Iheme only show the combination the caps made of HDPE and the vessel made of polypropylene. See paragraphs [0070] and [0071] of Iheme. But since a deflection temperature of HDPE (i.e., the cap of Iheme) is lower than a deflection temperature of polypropylene (i. e., the container of Iheme), the requirements of present claim 2 are not satisfied. See MatWeb. Instead, the configuration of Iheme is the opposite of the claimed configuration." This is simply not the case. In the rejection the Examiner clearly set forth that polycarbonate was being applied in the rejection as disclosed under paragraph [0069] of Iheme. Iheme discloses "the cap may be prepared from a number of different polymer and heteropolymer resins including...polycarbonate." Additionally Iheme clearly discloses that polypropylene is the material of choice for the vessel as stated in paragraph [0069]. This combination is therefore clearly set forth and furthermore undue experimentation is not required to formulate this example as is clearly stated by Iheme in paragraph [0070]. These features are therefore disclosed.

With respect to Applicant's argument that 41A does not contact the vessel 50, the Examiner points out that 41A has been used to designate the entire part not simply the local surface that the reference line contacts. Part 41A is clearly shown to contact the vial in the vicinity of reference character 44 as shown in FIG. 6. This is further supported in the applicant's disclosure, see paragraph [0121] which states "As shown in FIGS. 5 and 6, the annular outer flange 40, 40A has an inner surface 41, 41A adapted to grip an upper portion 62, (see FIG. 1), of the outer surface 53 of the vessel 50."

For these reasons the rejection is upheld. The Examiner asserts that Iheme clearly shows all the features and teachings that Applicant argued.